

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD GLANDA Personal
Representative of the Estate of
HELEN GLANDA,

Plaintiff,

v.

Case No. 07-13263
Hon. Sean F. Cox

TWENTY PACK MANAGEMENT
CORPORATION, et al.

Defendants.

ORDER

On May 7, 2008, Defendants filed a Motion for Summary Judgment, seeking summary judgment with respect to Plaintiff's negligence claim. In responding to Defendants' motion, Plaintiff asserted that it could establish foreseeability by submitting evidence that, in violation of R. 325.1922(1), Defendants failed to create a service plan for Mr. Looney.

This Court denied Defendants' Motion for Summary Judgment in an Opinion and Order dated August 28, 2008. (Docket Entry No. 84). In that Opinion & Order, this Court rejected Plaintiff's attempt to establish foreseeability by offering evidence to show that Defendants failed to comply with R. 325.1922(1) and stated:

Plaintiff seeks to offer Defendants' failure to comply with R. 325.1922(1) as evidence of negligence. However, Plaintiff has not offered any authority that the harm suffered by Helen Glanda was the type of harm the regulation was designed to prevent. Accordingly, Defendants' failure to comply with R. 325.1922(1) is not admissible evidence of negligence and **cannot be considered for purposes of this Motion.**

(Opinion & Order at 9)(emphasis added). As explained later in the Opinion & Order, the Court

nevertheless concluded that a question of fact existed with respect to the foreseeability issue and, as a result, denied Defendants' motion.

Notably, prior to this Court's August 28, 2008 Opinion & Order, neither party had filed a motion seeking a ruling either permitting or excluding evidence from being presented at trial relating to R. 325.1922(1) and/or any failure to create a service plan for Mr. Looney. Thus, while this Court concluded that Plaintiff's arguments regarding R. 325.1922(1) could not be considered for purposes of Defendants' Summary Judgment Motion, the Court did not intend to make any evidentiary rulings with respect to the evidence that may be presented at trial. In order to clarify this Court's intended ruling, the Court shall issue an Amended Opinion and Order.

Accordingly, the Court hereby **ORDERS** that:

- 1) The Court shall issue an "Amended Opinion And Order" denying Defendants' Motion for Summary Judgment that clarifies this Court's ruling on the limited issue presented in that motion. Plaintiff's pending Motion for Reconsideration is Denied in all other respects; and
- 2) To the extent that Plaintiff seeks a ruling that Defendants' failure to comply with R. 325.1922(1) is admissible evidence of negligence at the time of trial, Plaintiff is instructed to file an appropriate motion in limine on that issue, which shall be fully briefed by the parties.

IT IS SO ORDERED.

s/Sean F. Cox _____
Sean F. Cox
United States District Judge

Dated: September 25, 2008

UNITED STATES DISTRICT COURT
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Defendants.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing document was served upon counsel of record
on September 25, 2008, by electronic and/or ordinary mail.

s/Jennifer Hernandez
Case Manager